

LAW OFFICES OF DAVID P. GARDNER  
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Attorney for Defendant  
DELIVERY ASSOCIATES, INC.

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SANTA ROSA DIVISION

In re ) Chapter 11 Case No. 11-10231  
RMS PROPERTIES, LLC, )  
Debtor. )

\_\_\_\_\_) Adversary Proceeding No. 12-1134  
RMS PROPERTIES, LLC, )

Plaintiff, ) **DECLARATION OF DAVID P. GARDNER**  
vs. ) **IN SUPPORT OF EX PARTE**  
 ) **APPLICATION TO VACATE TRIAL**  
 ) **DATE AND RE-OPEN DISCOVERY**

DELIVERY ASSOCIATES, INC., ) Trial: June 25, 2013  
Defendant. ) Time: 9:00 a.m.  
\_\_\_\_\_) Place: Courtroom No. 1  
 ) 99 South E Street  
 ) Santa Rosa, CA 95403

I, David P. Gardner, hereby declare as follows:

1. I am a an attorney licensed to practice before all courts of the State of California and am the attorney of record for defendant Delivery Associates, Inc. herein. I make this declaration in support of Defendant's Ex Parte Application to Vacate Trial Date and Re-open Discovery. The facts set forth below are true of my own personal knowledge, and if called as a witness I could and would testify competently thereto.

2. I have a medical condition which has prevented me from working at full capacity for the past several weeks. Although I believed I would be able to fully prepare for the upcoming trial of

1 this matter on Tuesday, June 25, 2013, because of my medical condition that has not been possible  
2 and I have been unable to do so.

3 3. I am being treated by Dr. David A. Browne and I believe that my medical condition  
4 will be resolved with treatment and that I will be able to work at full capacity in 60-90 days.

5 4. I have been practicing law and litigating in California since 1986 and have never  
6 previously had to bring a motion to continue or vacate a trial date.

7 5. I make this application in the interests of justice so that my client will have a trial  
8 based on the merits of this action and not be prejudiced by my medical condition.

9 6. After receiving my doctor's signed declaration on June 21, 2013, I called Mikel D.  
10 Bryan, attorney for plaintiff RMS Properties, LLC, at approximately 2:00 p.m. to discuss this matter  
11 with him and notify him of this application. Unfortunately his office closes at noon of Fridays and I  
12 was unable to reach him. I did, however, leave a voice mail message for Mr. Bryan with my cell  
13 phone number and asked him to call me as soon as possible.

14 7. Mr. Bryan returned my call at 10:12 a.m. this morning and stated that he would not  
15 oppose a request for a continuance of the trial date based on my current medical condition.

16 Dated: June 24, 2013

17 /s/ David P. Gardner  
18 David P. Gardner  
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